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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,225	01/07/2004	Frederick Bleckmann	724917-16	3526

22204 7590 04/30/2007  
NIXON PEABODY, LLP  
401 9TH STREET, NW  
SUITE 900  
WASHINGTON, DC 20004-2128

EXAMINER
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SELLS, JAMES D

ART UNIT	PAPER NUMBER
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1734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,225	<b>Applicant(s)</b> BLECKMANN, FREDERICK	
	<b>Examiner</b> James Sells	<b>Art Unit</b> 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 1-8 in the reply filed on 2-21-07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zurmuhr et al (DE 26 24 055) in view of Berson et al (US Patent 6,904,525)

Zurmuhr discloses a method and apparatus for producing labels. As shown in Fig. 3, the system comprises roll 4' of strip material 3 which is fed to folding station 8. Folding station 8 folds the strip along the centerline and heated press 31 presses the folded strip. Next the strip travels through perforator 12, past photocell 14 of scanning station 9, and feed system 10 before individual labels are cut at heat-cutting station 15.

However, Zurmuhr does not disclose the master repeat of a recognizable design as claimed by the applicant. Regarding this difference, the applicant is directed to the reference of Berson.

Berson discloses a method of preventing counterfeiting of articles. As shown in the figures, label 10 includes logo 12, brand name 14, and unreproduceable pattern 32 incorporated into field 34. Pattern 32 is then scanned to verify the authenticity of the label 10. See col. 3, lines 43-65. Thus pattern 32 forms the master repeat of a recognizable design as claimed by the applicant.

It would have been obvious to one having ordinary skill in the art to employ a master repeat of a recognizable design, as taught by Berson, in the method of Zurmuhr in order to verify the authenticity of the label. Further, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Therefore without the disclosure of unexpected results, it is the examiner's position that the specific form of the master repeat (i.e. incorporated into the warp and weft yarns, joining the ribbon of material to the ribbon of labels) and location of the master repeat (i.e. along the back length of the ribbon of material) are within the purview of one having ordinary skill in the art and would have been obvious to employ in the method of Zurmuhr as a matter of design choice.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zurmuhr et al in view of Berson et al as described above in view of Clare (US Patent 5,745, 036)

Clare discloses an electronic article security system in which security tags 22 are attached to articles 12. These tags 22 include a radio frequency circuit 24 and may be incorporated into the articles at the point of manufacture (see col. 4, lines 15-39). It

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would have been obvious to one having ordinary skill in the art to employ an RF security circuit, as taught by Clare, in the labels or tags of Zurmuhr in order to provide increased security for the articles to which the labels are attached.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zurmuhr et al in view of Berson et al as described above in paragraph 3 in view of Dolling et al (US Patent 5,932,041).

Dolling discloses a method and apparatus for ultrasonically cutting sheets and textile webs. As shown in Figs. 1-2, the system comprises ultrasonic sonotrode 5 that cooperates with separator anvil wheel 3 to cut web 1. It would have been obvious to one having ordinary skill in the art to substitute an ultrasonic cutter, as taught by Dolling, for the heat-cutter in the method and apparatus of Zurmuhr as a matter of design choice because ultrasonic cutters and heat cutters are functionally equivalent alternate expedients.

***Telephone/Fax***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is (571) 272-1237. The examiner can normally be reached on Monday-Friday between 9:30 AM and 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

A handwritten signature in black ink, appearing to read 'J. Sells', with a horizontal line drawn underneath the signature.

**JAMES SELLS  
PRIMARY EXAMINER  
TECH. CENTER 1700**